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IN THE UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF CALIFORNIA

In re:

ACACIA MEDIA TECHNOLOGIES CORPORATION

.

Case No. 5:05-CV-01114 JW

MDL No. 1665

NOTICE OF MOTION AND MOTION TO WITHDRAW AS COUNSEL FOR ASKCS.COM INC.; DECLARATION OF ALFREDO BISMONTE

Date: June 4, 2007
Time: 9:00 a.m.
Place: Courtroom 8, 4th Floor

Judge James Ware

Dockets.Justia

NOTICE OF MOTION

PLEASE TAKE NOTICE that on June 4, 2007 at 9:00 a.m. in Courtroom 8, 4th Floor of the San Jose Division of the United States District Court for the Northern District of California, located at 280 South 1st Street, San Jose, California, Gifford, Krass, Groh, Sprinkle, Anderson & Citkowski, P.C., and Beck, Ross, Bismonte & Finley, LLP. will and hereby do move the Court to allow them to withdraw as counsel of record for defendant AskCS.com Inc. This motion is made pursuant to Civil Local Rule 11-5 and is based on this Notice of Motion and Motion, the Memorandum of Points and Authorities set forth below, the accompanying declaration of Alfredo A. Bismonte and exhibits thereto, the complete records and files of this action, any arguments presented, and such additional evidence as the Court may consider, and all files of this action.

MEMORANDUM OF POINTS AND AUTHORITIES

Defendant AskCS.com, Inc. ("AskCS") is presently represented by the law firms of Beck, Ross, Bismonte & Finley, LLP ("Beck Ross") and Gifford, Krass, Groh, Sprinkle, Anderson & Citkowski, P.C. ("Gifford Krass"). Gifford Krass has acted as counsel for AskCS. Beck Ross has served as local counsel.

Gifford Krass and Beck Ross have learned that AskCS is now defunct, with no employees or other company representatives to communicate with its legal counsel. Accordingly, these law firms seek leave to withdraw as counsel for defendant AskCS in this matter.

BACKGROUND

On November 20, 2006, Gifford Krass sent a letter to Beck Ross advising that AskCS is "now a defunct company" and that "[n]o further fees, costs or expenses will be paid after today."[1]

Beck Ross thereafter directed a letter by certified mail to AskCS's last known address referencing the Gifford Krass letter and advising that Beck Ross intended to "file a motion to withdraw as local counsel" for AskCS. This letter was returned as undeliverable and further efforts to locate an alternate address for AskCS have been unsuccessful.[2] The AskCS.com website is likewise "offline."[3]

[1] Bismonte Decl., Ex. A.
[2] Bismonte Decl., Ex. B. Bismonte
[3] Bismonte Decl., Ex. C.

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ARGUMENT

Pursuant to Civil L.R. 11-5, counsel may withdraw from an action if "relieved by order of Court after written notice has been given reasonably in advance to the client and to all other parties who have appeared in the case."

This is a routine motion to be relieved as counsel. AskCS is a defunct entity that is no longer able to pay its attorneys fees or cooperate with counsel in its representation. Gifford Krass and Beck Ross have sent notice of this motion to AskCS's last known address and have notified all other parties who have appeared in this case.[4]

For these reasons, Gifford Krass and Beck Ross respectfully submit that their motion to be relieved as counsel for AskCS should be granted.

BECK, ROSS, BISMONTE & FINLEY LLP

Dated: April 20, 2007

By: /s/
Alfredo A. Bismonte, Esq.

[4] Notice to other parties has been automatically given by e-filing this motion.

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DECLARATION OF ALFREDO BISMONTE

1. I am an attorney with the law firm of Beck, Ross, Bismonte & Finley, LLP ("Beck Ross"), local counsel of record for AskCS.COM INC. ("AskCS") in the above entitled case. I have personal knowledge of the matters stated in this declaration and, if called as a witness, would competently testify to them.

2. On November 21, 2006, I received a letter from Mr. Douglas W. Sprinkle of Gifford, Krass, Groh, Sprinkle, Anderson & Citkowski, P.C. ("Gifford Krass"), AskCS's Counsel of Record in Michigan. The letter advised that AskCS is now a defunct company and instructed my firm not to incur any further costs, expenses or attorney fees for AskCS. A true and correct copy of this letter attached hereto as Exhibit A.

3. On March 29, 2007, I directed a letter by certified mail to AskCS's last known address referencing the Gifford Krass letter and advising that Beck Ross intended to "file a motion to withdraw as local counsel" for AskCS. This letter was returned as undeliverable and further efforts to locate an address for AskCS have been unsuccessful. I had contacted Mr. Douglas W. Sprinkle for forwarding address of ASKCS.COM Inc. and was informed that there was no other address available. A true and correct copy of my March 29, 2007 letter and undeliverable notification are collectively attached hereto as Exhibit B.

4. The AskCS.com website is likewise "offline." A true and correct copy of an April 19, 2007 computer print out from http://www.askcs.com/ is attached hereto as Exhibit C.

Executed this 20th day of April 2007 at San Jose, California.

I declare under penalty of perjury under the laws of the United States of America that the forgoing is true and correct.

/s/
Alfredo A. Bismonte